The English doctrine as adopted by many of the American courts, viz., that there is no presumption of life or of the time at which death occurred is believed to be the soundest on principle, reason, and justice. Whatever may be said against it on the ground of uncertainty, it can not be truthfully damned with the legal stigma of inconsistency.

Some cases seem to support an extreme opposite doctrine that the presumption of death from absence raises the further presumption that the party died about the time he disappeared.[27] Even if this doctrine was advanced as a strict legal presumption it would seem to be based on sounder reason than the preceding; however it is believed that a close examination of the cases will reveal that the conclusion arrived at was more an inference of fact justified by the circumstances and conditions of the particular case, than a legal presumption.

LIABILITY OF COMMON CARRIER FOR DESTRUCTION OF GOODS BY AN ACT OF GOD TO WHICH THEY WERE EXPOSED BY THE CARRIER'S NEGLIGENT DELAY.—By the common law the common carrier is, with certain exceptions, an insurer of the goods intrusted to him.[1] But a well known exception to this rule is that a carrier is not liable if the loss is occasioned by an act of God.[2] In order for a carrier to claim this exoneration he must himself use reasonable care either to avoid such peril or to minimize the loss after the goods are actually exposed to the peril.[3] The carrier thus being liable for any negligent and unreasonable delay and not being liable for loss occasioned by an act of God, there arises the question of the carrier's liability for loss or damages due to an act of God, to which the goods would not have been exposed save for the carrier's negligent and unreasonable delay. Upon this question the authorities are about evenly divided.

The first guiding decision on this subject was the Pennsylvania case of *Morrison* v. *Davis*.[4] Here goods were shipped on a canal boat which having been delayed because of a lame horse was wrecked by an extraordinary flood which it would have escaped had it not been for such delay, and it was held that the act of God excused the carrier from liability. The main reason upon which this decision is based is that one is liable only for losses due to direct and proximate causes and not for those due to remote and consequential

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and in each instance the object is to arrive at and act on the real truth. * * * The true proposition is, that those who found a right upon a person having survived a particular period must establish that fact affirmatively by evidence."

[27] Naisor *v.* Brockway, Rich Eq. Cas. (S. C.) 449; Canady *v.* George, 6 Rich. Eq. (S. C.) 103. See also, Stevens *v.* McNamara, 36 Me. 176, 58 Am. Dec. 740.

[1] Hollister *v.* Nowlen, 19 Wend. (N. Y.) 234, 32 Am. Dec. 455.

[2] Long *v.* Pennsylvania Ry. Co., 147 Pa. 343, 23 Atl. 459.

[3] Michaels *v.* New York, etc., R. Co., 30 N. Y. 564, 30 Am. Dec. 415.

[4] 20 Pa. St. 171, 57 Am. Dec. 695.

causes, the act of God being deemed the proximate and the delay the remote cause. The delay is considered a condition and not a cause.

The next great case on this question was *Denny* v. *New York, Cent. R. R. Co.*,[5] in which goods were negligently delayed in transit and placed in the carrier's depot in which they were damaged by an extraordinary flood. In accordance with the doctrine laid down by the Pennsylvania court, the Massachusetts court also held that the carrier was not liable. There is one distinguishing fact between these two cases in that the goods were not in transit in the latter case but were in the carrier's warehouse, and the decision was based largely on the ground that the delay in transit was no longer an active, efficient and prevailing cause but had ceased to operate as such. It is difficult to see how the delay is any more active as a cause in one than it is in another and the principle seems to be the same, as the liability as a common carrier had not ceased. The doctrine laid down by these two cases is well supported.[6]

On the other hand, what is known as the New York rule originated in the case of *Read* v. *Spaulding*.[7] The goods in transit would not have been exposed to a flood save for the negligent delay of the carrier and upon such grounds the carrier was held liable for loss. This case was more or less founded upon a dictum from an earlier case in that state, and the earlier case is often cited as the leading case on this side of the question.[8] The New York rule has also been well supported in subsequent cases.[9] Several reasons for this line of authority are set forth in the cases. One is that it is a condition precedent to a carrier's exoneration that he should have been in no default; or, in other words, that the goods should not have been exposed to the peril or accident by his own misconduct, neglect or ignorance. Another basis for this holding is that the negligence is considered as continuing and thus being one of the causes, the wrongdoer, who is responsible for such cause, should not be allowed to apportion or qualify his own wrong. The authori-

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[5] 13 Gray (Mass.) 481, 74 Am. Dec. 645.

[6] Memphis, etc., R. Co. *v.* Reeves, 10 Wall. 176; Daniels *v.* Ballantine, 23 Ohio St. 532, 13 Am. Rep. 264; Hunt *v.* Missouri, etc., R. Co. (Tex. Civ. App.), 74 S. W. 69; Herring *v.* Chesapeake, etc., R. Co., 101 Va. 778, 45 S. E. 322; Moffatt Commission Co. *v.* Union, etc., R. Co., 113 Mo. App. 544, 88 S. W. 117; Yazoo, etc., R. Co. *v.* Millsaps, 76 Miss. 855, 25 South. 672. In McClary *v.* Sioux City, etc., R. Co., 3 Neb. 44, 19 Am. Rep. 631, a passenger train was delayed by defendant's negligence and wrecked by a cyclone which it would have avoided had it been on time. The plaintiff, a passenger, was injured and sued therefor, but it was held that the carrier was not liable.

[7] 30 N. Y. 630, 86 Am. Dec. 426.

[8] Michaels *v.* New York, etc., R. Co., *supra*.

[9] Alabama etc., R. Co. *v.* Quarles, 145 Ala. 436, 40 So. 120, 5 L. R. A. (N. S.) 867; Wald *v.* Pittsburg, etc., R. Co., 162 Ill. 545, 44 N. E. 888; Green-Wheeler Shoe Co. *v.* Chicago, etc., R. Co., 130 Iowa 123, 106 N. W. 498, 5 L. R. A. (N. S.) 882; Bibb Broom Corn Co. *v.* Atchison, etc., R. Co., 94 Minn. 269, 102 N. W. 709; Hernsheim Bros. *v.* Newport News, etc., R. Co., 18 Ky. L. Rep. 227, 35 S. W. 1115.

ties also make a distinction between remoteness and anticipation of loss in cases of negligence and those following the New York rule hold that the case comes within the latter because all ordinary, normal, natural perils are within the scope of that potential anticipation which the law takes as the basis of liability and any person must foresee that delay extends the time during which casualties may overtake the risk. An analogy of this case is also drawn to that where a carrier deviates from the route agreed upon or in contemplation of the parties, in which case the carrier is liable for any damage occurring during such deviation though arising from a cause which would not otherwise have rendered him liable.

In accordance with the view taken in the Pennsylvania and Massachusetts cases is the late case of *Seaboard Air Line Ry.* v. *Mullin* (Fla.), 70 So. 467, in which the facts were identical to those of *Reed* v. *Spaulding* above, and the carrier was accordingly held not liable. This view certainly seems sound on principle notwithstanding the various reasons for holding a carrier liable under such circumstances. The application of the rule of proximate cause may appear to be a strict one but nevertheless it is reasonable. It is true that delay extends the time during which casualties may overtake the risk but even in the legal anticipation of loss in cases of negligence there is not included cases of extraordinary, abnormal and unnatural perils as acts of God. The natural anticipation of loss is the loss of time occasioned by the delay and such other losses as are due directly to such delay. Also the analogy to cases of deviation is unsound because the rule in deviation cases only applies where such deviation amounts to a conversion and certainly there is no conversion by a mere delay.

SITUS OF INTANGIBLE PERSONALTY FOR THE PURPOSES OF TAXATION.—Since intangible personalty has no actual situs in the physical and commonly accepted meaning of the term, its situs for the purpose of taxation is generally its legal situs, namely, the domicil of the owner.[1] Thus, a debt evidenced by a note is taxable at the domicil of the creditor,[2] as are also bonds.[3] Nor does the actual situs of the physical note itself or of the other evidence of the debt affect the taxing power.[4] Since the tax laws of a state can have no extra-territorial application,[5] it is necessary that there be some property within the jurisdiction of the taxing power on which the tax law can operate. Obviously this question causes little difficulty

[1] Worthington et ux. *v.* Sebastian, 25 Ohio St. 1; Kirtland *v.* Hotchkiss, 100 U. S. 491; Union Transit Co. *v.* Kentucky, 199 U. S. 194.
[2] Hunter *v.* Board of Supervisors, 33 Iowa, 1, 11 Am. Rep. 132.
[3] Kirtland *v.* Hotchkiss, *supra.*
[4] Hunter *v.* Board of Supervisors, *supra;* Kirtland *v.* Hotchkiss, *supra; contra,* Wilcox *v.* Ellis, 14 Kan. 588, 19 Am. Rep. 107; State ex rel. Dunnica *v.* County Court 69 Mo. 454.
[5] State Tax on Foreign Held Bonds, 15 Wall. 300.